

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FEYSAL AYATI-GHAFFARI	§	
	§	
v.	§	CASE NO. 4:14-CV-840
	§	(Judge Mazzant/Judge Nowak)
TITLE SOURCE, INC. "TSI" ESCROW	§	

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 8, 2016, the report of the Magistrate Judge (Dkt. #46) was entered containing proposed findings of fact and recommendations that Plaintiff Feysal Ayati-Ghaffari's *pro se* Motion to Appeal in Forma Pauperis (Dkt. #40) be denied. The Magistrate Judge concluded that even if Plaintiff is indigent, Plaintiff's Motion must still be denied because Plaintiff failed to demonstrate that his requested appeal raises non-frivolous issues (Dkt. #46 at 3).

Plaintiff's underlying lawsuit relates to a loan that did not close for a property located at 4508 Lone Grove Lane, Plano, Texas 75093 (the "Property") (Dkt. #3). In connection therewith, Plaintiff alleged claims for "breach of duty-contract," quantum meruit, promissory estoppel, and slander; and, may have also asserted claims for fraud; civil conspiracy; negligence; a violation of Florida Statute section 627.792; defalcation, conversion, and misappropriation; vicarious liability under the theory of respondeat superior; and reformation. *Id.* On August 10, 2015, the Magistrate Judge recommended that Plaintiff's claims be dismissed with prejudice for failure to state a claim (Dkt. #34). More specifically, on August 10, 2015, the report of the Magistrate Judge (Dkt. #34) was entered containing proposed findings of fact and recommendations that Defendant's FRCP 12(b)(6) Motion to Dismiss for Failure to State a Claim (Dkt. #5) and

Defendant Title Source, Inc.'s Motion for Ruling on Defendant's FRCP 12(b)(6) Motion to Dismiss for Failure to State a Claim (Dkt. #22) be granted. On September 3, 2015, the undersigned adopted the report of the Magistrate Judge and dismissed Plaintiff's case with prejudice (Dkt. #38). Plaintiff subsequently filed a Notice of Appeal (Dkt. #39). Also on September 15, 2015, Plaintiff filed a Motion to Appeal in Forma Pauperis (Dkt. #40). On October 30, 2015, the Court issued an Order advising Plaintiff that insufficient information had been provided for the Court to rule on his Motion and directing Plaintiff to comply with Federal Rule of Appellate Procedure 24 (Dkt. #41). Thereafter, Plaintiff submitted his Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis (Dkt. #42). The Fifth Circuit has opened an appellate case number for Plaintiff's suit, USCA number 15-41260. On January 8, 2016, the Magistrate Judge recommended that Plaintiff's motion to appeal *in forma pauperis* be denied because Plaintiff failed to demonstrate that his requested appeal raises non-frivolous issues (Dkt #46 at 3). On January 20, 2016, Plaintiff filed "Appellant's Response to 1/8/16 **Forma-Pauperis-Hearing** Requestd [sic] Third Motion To Correct Clerical Error in Judgment" (Dkt. #47), which is herein construed as objections to the report and recommendation of the Magistrate Judge (emphasis in original).

Plaintiff's objections are nonsensical. A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(c); FED. R. CIV. P. 72(b)(2)-(3). "Parties filing objections must specifically identify those findings [to which they object]. Frivolous, conclusive or general objections need not be considered by the district court." *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en

banc); *Chase Bank USA, N.A. v. McLain*, No. 1:12-CV-353, 2013 WL 713404, at *1 (E.D. Tex. Feb. 26, 2012). In Plaintiff's filing, he does not identify any specific issue of law or fact, among those set forth in the Magistrate Judge's report and recommendation, with which he disagrees, nor does he address the findings and recommendations of the Magistrate Judge. Therefore, Plaintiff's objection fails to invoke his right to a de novo review of the report and recommendation. Nonetheless, the Court has undertaken a complete de novo review of the report and recommendation, and the Court concludes that the Magistrate Judge's findings and conclusions are correct. *See Douglass*, 79 F.3d at 1429 (noting that a district court may alternatively find the magistrate judge's findings and conclusions were correct even though a party did not properly object to the report and recommendation). An appeal is taken in good faith if it presents an arguable issue on the merits or factual basis for the claim and therefore is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Howard v. King*, 707 F.2d 215, 219 (5th Cir. 1983). To that end, a movant must demonstrate the existence of a non-frivolous issue for appeal. *See also Payne v. Lynaugh*, 843 F.2d 177, 178 (5th Cir. 1988). The Magistrate Judge found that Plaintiff's motion to appeal *in forma pauperis* did not satisfy Plaintiff's obligation to demonstrate that his requested appeal raises non-frivolous issues. The Court agrees. The Court cannot discern, and/or Plaintiff has not identified, any non-frivolous issues for appeal (*see* Dkts. #39, 40 and 42). Thus, the Court finds that Plaintiff's appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a)(3). Accordingly, the Court finds Plaintiff's objections are overruled.

Having received the report of the United States Magistrate Judge, having considered each of Plaintiff's timely filed objections (Dkt. #47), and having conducted a de novo review, the

Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report (Dkt. #46) as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Plaintiff Feysal Ayati-Ghaffari's *pro se* Motion to Appeal in Forma Pauperis (Dkt. #40) is **DENIED**.

All relief not previously granted is **DENIED**.

IT IS SO ORDERED.

SIGNED this 2nd day of February, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE